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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/491,721

01/27/2000

James W. Cree

TRED39 (211 US)

8978

53476

7590

10/02/2008

Tessari & Associates, PLLC  
205 N. Monroe Street  
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EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

10/02/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/491,721	<b>Applicant(s)</b> CREE ET AL.	
	<b>Examiner</b> Norca L. Torres-Velazquez	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 25-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicants have amended independent claims 1, 25 and 30 to now claim that the nonwoven web are consolidated heat set non-elastic thermoplastic fibers. No new matter was found.

### ***Claim Rejections - 35 USC § 102/103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. **Claims 1-6, 9-11, 13-17 and 25-30 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over MORMAN (US 5,336,545).**

The rejection as substantially set forth in section 4, pages 2-5 of the Office action dated June 6, 2006 is maintained herein. With regards to the new limitation requiring the nonwoven webs to be "heat-set", it is noted that the MORMAN reference teaches that necking and heat treating the neckable spunbond material decreases tensile properties but increases the cross-machine direction stretch. (Refer to Col. 15, lines 58-61)

### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. **Claims 1-6, 9-11, 13-17 and 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over MORMAN '545 as stated above and further in view of HASSENBOEHLER et al. (US Patent No. Re 35-206)**

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MORMAN does not disclose the processing limitation of laterally consolidating the fabric layers or setting the fabric layers in a transversely consolidated state before bonding to the film. HASSENBOEHLER et al. also teaches transversely consolidating a nonwoven web. (Abstract). HASSENBOEHLER et al. teaches that the nonwoven materials exhibit remarkable elasticity in the cross-direction (Col. 8, lines 30-34). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention to transversely consolidate the web of MORMAN in order to increase the elasticity in the cross-direction, as taught by HASSENBOEHLER et al.

**6. Claims 7, 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over MORMAN in view of HAFFNER et al. (US 5,789,065) or alternatively over MORMAN in view of HASSENBOEHLER et al. (Re 35,206).**

MORMAN do not teach the elastic sheet to be made from metallocene-based low-density polyethylene film. HAFFNER et al. disclose block copolymers and metallocene-catalyzed ethylene films as suitable elastic film layers useful in the same art of personal care products. It would have been obvious to one having ordinary skill in the art to use a metallocene-catalyzed ethylene film in the composite of MORMAN, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. With regards to claim 12, Morman does not teach perforating the elastic sheet. Haffner et al. disclose that by providing perforations in the elastic film layer allow it to be breathable. It would have been obvious to one having ordinary skill in the art to provide perforations in the elastic sheet of MORMAN in order to provide breathability to the composite, as taught by HAFFNER et al.

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***Response to Arguments***

7. Applicant's arguments filed 4/27/07 have been fully considered but they are not persuasive.

Arguments indicating that MORMAN does not teach a consolidated heat set nonwoven web of the present invention have been noted, however, it is noted herein that the reference teaches that necking and heat treating the neckable spunbond material decreases tensile properties but increases the cross-machine direction stretch. (Refer to Col. 15, lines 58-61) With regards to the combination of MORMAN and HASSENBOEHLER, a reference may be understood by the artisan as suggesting a solution to a problem that the reference does not discuss. See KSR, 137 S. Ct. at 1742, 82 USPQ2d at 1397 “Common sense teaches... that familiar items may have obvious uses beyond their primary purposes, and in any cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle. ... A person of ordinary skill is also a person of ordinary creativity, not an automaton.”).

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Norca L. Torres-Velazquez/  
Primary Examiner, Art Unit 1794